



# YOUR CONSUMER RIGHTS (GOODS)

A GUIDE TO THE  
CONSUMER GUARANTEES ACT



MINISTRY OF CONSUMER AFFAIRS  
MANATŪ KAIHOKOHOKO

New Zealand Government

# Watch your language

## Definitions and terms used in this booklet:

**Consumer:** a person who buys goods or services generally for personal, domestic or household use.

**Goods:** things we use – e.g. food, clothing, furniture, cars. “Goods” under the Consumer Guarantees Act includes pets.

**Guarantee:** a promise.

**Manufacturer:** under the Act this term includes importers and distributors of goods brought into New Zealand.

**Remedy:** an action taken by someone to fix a problem – e.g. a trader providing a refund is your remedy if goods have a major fault.

**Security interest:** an interest in property other than land that is created by an agreement that secures payment or performance of an obligation – e.g. the finance company has a security interest in goods offered as security for a loan or goods bought on hire purchase.

**Trader:** term used for someone in trade who sells goods to consumers – e.g. a retailer. “Trader” also covers second-hand dealers and motor vehicle dealers.

## From the courts

*This picture lets you know that a case about the Act has been taken to a court. We tell you what the judge said about different words or phrases in the Act. If you have a problem with goods, you don't have to take it to court. See page 37 of this booklet to find out where to go next when you and a trader can't agree.*



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## What is the Consumer Guarantees Act?

The Consumer Guarantees Act sets out:

- guarantees that goods and services must meet when sold by someone in trade; and
- remedies if a guarantee is not met.

This booklet covers goods. Services are covered in our booklet *Your Consumer Rights: A guide to the Consumer Guarantees Act (Services)*.

Goods must meet the guarantees of:

- acceptable quality
- fitness for particular purpose
- matching description
- matching sample or demonstration model
- reasonable price (when the price is not set)
- the trader having the right to sell goods
- spare parts and repair facilities being available (manufacturers).

If a guarantee is not met you may have rights against the trader (or in some cases the manufacturer) for a remedy to put the problem right.



If the problem is minor the trader must provide a remedy of repair. Or the trader can choose to replace or refund.

**If the problem is major, you can reject the goods and choose between a refund or replacement. Or you can keep the goods and seek compensation for the reduction in the value of the goods.**

In most cases which remedy you are entitled to will depend on how serious the problem is with the goods, and whether you are seeking a remedy from the trader or manufacturer.

### **Goods covered by the Act**

- goods (including second-hand goods) ordinarily bought for personal, domestic or household use – e.g. clothes, televisions, cars, groceries
- goods ordinarily used for personal, domestic or household use that have been given to you (as a gift), hired, rented, leased or bought on hire purchase
- free items given away by the trader or manufacturer when you purchase goods.

From July 2003 the Consumer Guarantees Act also became applicable to electricity, gas, water and computer software. You can seek a remedy where these goods fail to meet any of the guarantees in the Act.

## **BE AWARE**

In our view goods that can equally be bought for both commercial and domestic use – e.g. stationery, pens, desks – will be covered by the Act.

## Goods not covered by the Act

- goods ordinarily bought for commercial use – e.g. filing cabinets, machinery, farming equipment
- goods bought privately – e.g. from garage sales, school galas, newspaper advertisements
- goods bought at auctions or by tender
- goods bought for re-sale or re-supply
- goods bought before 1 April 1994
- real estate or land.

## BE AWARE

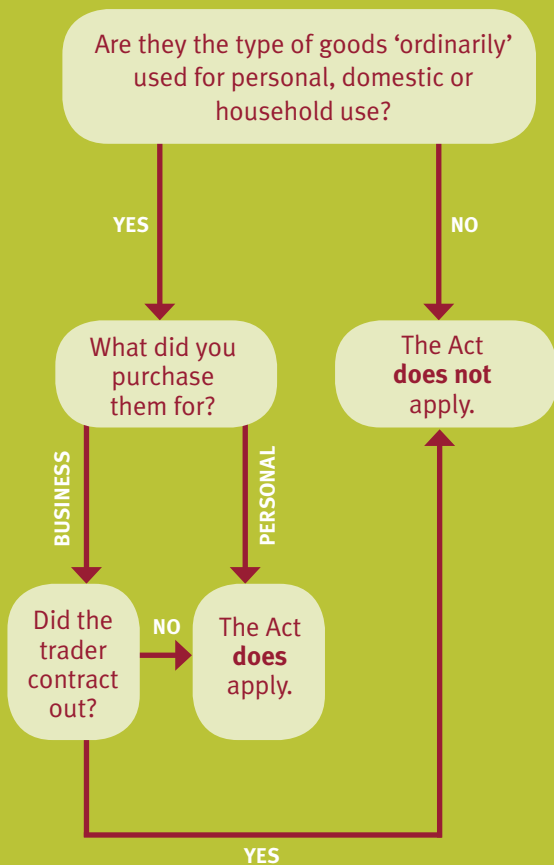
The trader can opt out (called “contract out”) of the Act if you have bought goods ordinarily bought for personal, domestic or household use for a business purpose.

*For example...*

- 1) *Sarah purchases a forklift to move around the garden statues and large pot planters in her garden. Forklifts are not the type of goods ordinarily purchased for personal, domestic or household use. So even though Sarah is using the forklift for her household use, the Act will not apply.*
- 2) *Sarah has a computing business. She purchases mobile phones for her employees to use for work. Mobile phones are the type of goods ordinarily purchased for personal, domestic or household use. Therefore, the Act will apply.*

# what is the Consumer Guarantees Act?

## Does the Consumer Guarantees Act apply?



## what is the Consumer Guarantees Act?

*However, when Sarah buys the phones the seller asks her to sign an agreement which contains a clause stating “The purchaser agrees that the goods are being purchased for a business purpose and are not subject to the Consumer Guarantees Act 1993.” By using this clause, the trader has contracted out of the Act.*

### **Do I have any rights if the Act does not apply?**

If the goods are faulty your remedies may come under the Sale of Goods Act, or the terms and conditions of the agreement between you and the trader. If a misrepresentation has been made to you about the goods, you may have rights under the Fair Trading Act or Contractual Remedies Act. See our factsheet *Goods for Commercial Use*.





# Guarantees for goods

## 1) Acceptable quality

This means that goods must be:

- fit for their normal purposes – e.g. a toaster must be able to toast bread
- acceptable in finish and appearance – e.g. a new toaster should be free of scratches
- free from minor defects – e.g. the timer knob on the toaster should not fall off when used for the first time
- safe – e.g. the toaster should not overheat
- durable – e.g. the toaster must function for a reasonable time after you bought it without breaking down.

### **The test for deciding whether goods are of acceptable quality is:**

A **reasonable consumer** would find the goods acceptable taking into account:

- the nature of the goods – e.g. a major appliance such as a fridge is expected to last longer than a pen
- the price paid – e.g. a cheap toaster is not expected to last as long as a top of the range one
- any information on the goods or the package – e.g. the box for the toaster shows it has a special defroster function
- any statement the trader made about the goods – e.g. the trader said that the crumb tray was easy to detach and clean.

## From the courts

*In a case about a second-hand car the court decided that, just because the car had a current warrant of fitness did not mean that a trader could claim the car was of acceptable quality.*

*A warrant of fitness is “information about the goods”. It means that the vehicle was **safe** when it was inspected. There may still be other problems with the car – e.g. in the engine – or that the car has become unsafe since the date of inspection.*



## Are second-hand goods covered by this guarantee?

Yes, but you need to consider their **age**, **price** and **condition** when deciding if they fail to meet the guarantee of acceptable quality.

*For example...*

*Joanne buys a washing machine for \$250 from a second hand store. The seller says it is two years old and is in good condition. The washing machine breaks down after two months. The store refuses to fix it because they say they only give a warranty for one month. A reasonable consumer would expect to get more than two months use from this machine. Joanne has the right to a remedy under the Act from the trader.*

## What about goods sold as “seconds”?

The guarantee covers goods sold as “seconds” **but** if you were told about a fault at the time of the sale, you will not have the right to a remedy for that fault.

However, if another fault develops you may have a right to a remedy.

*For example...*

*Stephen finds a bargain in the shoe shop, a pair of shoes labelled as “seconds” because of poor stitching. Proudly wearing his new footwear out on the town later in the week, his friends tease him, telling him that the stitching looks strange.*

*In this case, the goods still meet acceptable quality because Stephen was aware of this fault when he bought them. But they may not be acceptable if another fault develops – e.g. the sole cracks.*

### **What about goods which I rent or lease?**

These are covered too. When you hire or lease consumer goods they must also meet the guarantees under the Act.

*For example...*

- 1) *Alan hires a water blaster to clean the slime off his driveway, the machine is lacking power and leaks. Alan is entitled to a remedy under the act because the water blaster is not of an acceptable quality.*
- 2) *Tourists Kristof and Ulrika hire a camper van to tour the South Island. Fifty kilometres out of Haast the camper van breaks down. When they finally get it to a mechanic he says that the van has not been properly maintained or serviced for some time. Kristof and Ulrika are entitled to a remedy.*

## 2) Fit for particular purpose

This guarantee only applies when:

- you want the goods to do a specific job
- you have told the trader what you want the goods for; **and**
- you rely on their knowledge.

Claims that traders or manufacturers make about what goods can do may also be covered by this guarantee.

*For example...*

*Rosalind is a keen diver and buys a watch which she is told will be suitable for diving. A couple of weeks later she goes for her first dive with her new watch, only to surface and see that the dial has filled with water. She may have a claim against the trader or manufacturer who provided the information that it was suitable for diving.*

## BE AWARE

Goods must be fit for their **normal** purpose and any **particular** purpose you have told the trader you want them for. For example, a car's normal purpose is for transporting people, but you have told the trader you want to use the car to tow your boat (a particular purpose). The car in this case must be able to both transport people and tow a boat.

### 3) Matching description

If a description is given with the goods, it must be accurate. This guarantee is most important where goods are not available for inspection – e.g. when buying by mail order from a catalogue or from a television infomercial.

#### ***From the courts:***

*A judge stated that the verbal statement made by a car dealer that a car was a “good one” was an element of the description of the goods. When the car turned out to be a lemon, this amounted to a breach of the guarantee that goods must match their description.*



### 4) Matching sample or demonstration model

If you buy the goods based on the model or sample the trader has shown you, what you are supplied with must match with the sample.

If you buy something on the basis of a sample you have been shown, the supplier should give you a reasonable amount of time to compare the goods you receive with the sample.

*For example...*

*Julie gets shown a demonstration model of a television in the showroom of an appliance store and decides to buy it. When the television gets delivered a few days later, it must match the demonstration model she saw in the showroom.*

However, you should note that reasonable allowances must be made for goods that are made of natural material. This takes into account variations occurring in such items as wood (the grain) or wool (for different batches of colour).

## 5) Right to sell the goods

When you buy goods, the trader should be able to pass all the ownership rights or title in the goods to you. The trader must tell you when someone else has rights over the goods.

You have the right to expect that no one will have any right or claim to the goods you buy, except when they are on hire purchase and are legally repossessed by the retailer or finance company.

Where the goods are not on hire purchase they can only be repossessed if, before you bought the goods:

- you were told about the possibility of repossession; and
- you were given a copy, or the relevant part of a document telling you about repossession.

*For example...*

*Elaine orders a carpet and pays a deposit. The order form might say the trader can take the carpet back if the rest of the money is not paid within a month. The trader must tell you about this when you order the carpet and give you a copy of the relevant part of the order form.*

If you buy goods from a trader which are subject to a security interest that you did not know about, special rules in the Personal Property Securities Act apply to say whether you take those goods free of **the finance company's (secured party's)** security interest in the goods. For more information about these rules, see the Ministry of Economic Development's *Personal Property Securities Register Information for Consumers* brochure or visit [www.ppsr.govt.nz](http://www.ppsr.govt.nz).

## BE AWARE

If you are buying a used vehicle from a motor vehicle trader check the Information Notice on the vehicle. If the following statement is included on the front of the notice:

**“There is a security interest registered over this motor vehicle”.**

Then the person or company who has registered the security interest (money owing) may claim the car back from you.



## 6) Reasonable price

If a price for the goods is not set or agreed at the time you buy, the Act says you only have to pay a reasonable price. You can work out what a reasonable price is by finding out what other sellers in your area are charging for similar goods. We suggest you ask about the price before buying the goods.

## BE AWARE

You cannot use this guarantee to recover money if you agree on the price for the goods and later find out that the price may be unreasonable.





## Manufacturer's guarantees

### Spare parts and repair facilities

The manufacturer or importer must take reasonable steps to provide spare parts and repair facilities (a place that can fix your goods) for a reasonable time after you purchase the goods. The manufacturer or importer can contract out of this guarantee by letting you know at the time you buy the goods that repair facilities and spare parts are not available.

*For example...*

*Richard drops his digital camera which he bought new 12 months ago. He contacts the importer and asks where he can get it repaired. They say that they no longer supply parts for that model of camera. A reasonable consumer would expect a camera only one year old to be repairable. Richard has a right to a remedy against the importer under the Act.*

### Manufacturer's guarantee/ warranty

The Act gives consumers the right to seek a remedy from the manufacturer whether or not the goods come with a manufacturer's warranty (referred to in the Act as an "express guarantee").

Manufacturers do not have to provide a written warranty with their goods. However, if they choose to do so, the Act says they must honour their obligations under that warranty.

### **Should I buy an extended warranty?**

Not unless you are sure it will be useful. These warranties are usually expensive; the retailer may tell you that an extended warranty is extra protection which you would not have unless you buy one.

Remember though that in most situations the Act requires the trader to remedy any minor faults and entitles you to a refund or a replacement for serious faults.

Goods must be of acceptable quality. This means that they must be durable, they should last a reasonable length of time having regard to the price paid, the type of goods and anything said about them by the trader.



*For example...*

*Sione bought a plasma television three years ago for \$6,000. Yesterday the television stopped working.*

*When Sione went back to the trader he was told that he had no rights as the television was only under the manufacturer's warranty for 12 months, and that he should have bought an extended warranty which would have given him five years cover.*

*Sione tells the trader that a reasonable consumer would expect more than three years use from a \$6,000 television and requires the trader to provide a remedy under the Act.*

## **So when will an extended warranty be useful?**

If you are going to use the goods for your business, a warranty may be useful because you won't have the protection of the quality guarantees given under the Act.

Also, if you are buying goods at an auction or by tender a warranty may be useful because you won't have the protection of the quality guarantees under the Act.

## Remedies from traders

### Do I have to deal with the manufacturer?

Where goods are not of acceptable quality, or do not comply with the manufacturer's description, you have the right to choose whether to go to the manufacturer or retailer for a remedy.

If you chose to claim a remedy from the retailer, the retailer must not tell you that you have to go back to the manufacturer, or that you have to claim under a manufacturer's warranty. If a retailer does this, they may be misleading you about your rights and breaching the Fair Trading Act 1986.

### Remedies from traders

Remember in this booklet we use the term 'trader' to cover a person in trade who sells goods to consumers. This includes retailers, motor vehicle dealers and second-hand dealers.

If the goods are not of acceptable quality or fit for a particular purpose, do not match the description or sample, or the trader does not have the right to sell the goods, then you may have a right to a remedy from the trader.

### If the fault is minor and can be remedied

You must ask the trader to put the problem right. The trader can choose between:

- repairing the goods
- giving you an identical replacement

- providing you with a refund if the trader can't be reasonably expected to repair the goods – e.g. the cost of repairing the goods would be more than the price you paid for them.

## Repair to be within a reasonable time

If the trader chooses to repair the goods, the repair must be carried out within a **reasonable** time. To decide what a reasonable time is, consider how long it would normally take for goods of that type to be repaired. Include the time taken for goods to be sent to and from a repairer or to get spare parts.

## What if the trader refuses, or takes too long to repair the goods?

You can:

- reject the goods and ask for your money back; **or**
- reject the goods and ask for replacement goods if these are reasonably available to the trader; **or**
- take the goods somewhere else to be fixed and ask the trader to cover the cost of this repair.

# BE AWARE

You may not be able to recover the cost from a trader **unless**:

- you can show that the goods were faulty
- you made a reasonable attempt to contact the trader
- the repair was necessary.

**We suggest** you ask the person who repairs the goods to provide information in writing about the fault and what was done to fix it. Keep the receipt and work record.

**What if the trader repairs or replaces the goods but the problem is still not fixed?**

If repair was not successful either because the trader did not have the skill to do the job or the problem with the goods can't be fixed, or if replacement goods have the same or a similar problem, you may choose to reject the goods and seek either a refund or replacement.

**Can the trader charge me for sending the goods away to the repairer?**

No, not if the trader accepts that the goods are faulty.

**Can the trader refuse to fix goods when I have altered them?**

Yes, if the fault occurred because the goods had been changed or altered by you. But the trader may have to provide a remedy for a fault that is not related to your alteration.

**If goods are replaced, is the replacement covered by the Act too?**

Yes. The Act says that the same guarantees apply to replacement goods.

## **If the fault is serious or can't be remedied**

If the problem with the goods can't be fixed, or the problem is a serious one, **you** (not the trader) can choose between:

- rejecting the goods and asking for a:
  - refund, or
  - replacement if goods of the same type and similar value are reasonably available to the trader
- keeping the goods but asking for compensation to make up for the drop in value caused by the fault.

## **It is not the trader's right to decide the remedy for a serious fault**

Where faulty goods are replaced by the retailer they do not have the right to ask you to pay extra for the replacement or to pay money for the use of the goods. This is so there is an incentive for traders to sort out problems with goods as quickly as possible.

## **How do I know if a fault is serious?**

A serious fault is one where the goods are:

- unsafe – e.g. an electric blanket has faulty wiring
- significantly different from the sample or description – e.g. the wallpaper you ordered is striped not plain
- unfit for the particular purpose you wanted to use them for and they cannot be repaired or modified to make them do the job – e.g. a car that is not powerful enough to tow your boat
- substantially unfit for their normal purpose – e.g. a rain coat that is not shower proof.

Other things you should consider when deciding whether a fault is serious are:

- **How long** have you had the goods before they developed the fault? The shorter the time the more serious the fault.
- **How much** did the goods cost? The more expensive they are the less acceptable any fault is.
- **What claims** were made about the goods in the advertising, packaging, or by the seller?
- **Other faults** – have there been any other faults with the goods? If yes, then this will make this fault more likely to be serious.

### *From the courts*

*The courts have decided that a fault might be considered serious when:*

- *the cost of the repair is high compared to the overall price of the goods – e.g. repairs of \$1,000 required to be done to a car that was bought for \$5,000*
- *there are a number of small faults with the goods which on their own are minor but together may be seen as serious.*



### **What if the trader does not think it is a serious fault, but I do?**

You may have to get a technical opinion from someone who knows about that type of good to support your view that the fault is serious.

### **Do I have to return the goods?**

You usually need to return the goods before you can ask for a refund or replacement. The Act calls this “rejecting the goods”.



If you decide you would like to reject the goods, it is important that you follow the correct steps.

You need to advise the trader of your intention to reject the goods and your reason for doing so. You can do this verbally or in writing. However, if the trader is reluctant to accept the goods back, we recommend that you put the rejection in writing.

Here's an example of some wording that you can use:

The goods I purchased from you on *[insert date]* have a serious fault. The fault is *[describe fault]*. I am entitled to reject the goods under the Consumer Guarantees Act 1993. This letter is to inform you that I am rejecting the goods today. Please refund the purchase price of *[insert price]*. I will be in touch with you soon to arrange the return of the goods.

The Act says you must reject goods within a reasonable time of discovering the problem.

### ***From the courts:***

*Six months after a consumer bought a car, they took it to get a warrant of fitness. The car failed its warrant due to rust in the chassis. The consumer spent the next few months negotiating with the trader over repairs. They finally got fed up and told the trader they wanted their money back. The court said that they should have rejected the car when it failed the warrant of fitness check. By waiting so long, they lost the right to do so.*



To ensure you do not lose the right to reject goods, you should notify the trader that you want your money back immediately. You may still negotiate remedies with the trader after doing so.

### **What if returning the goods is difficult or expensive?**

If the cost of returning the goods is significant then the trader must collect them from you at their expense.

*For example...*

*Debbie bought a king-sized bed which has a serious fault. It is too big for her to take back to the trader and she doesn't want to pay for a furniture remover. In our view, if the goods had to be delivered to you in the first place due to their size, it is reasonable to expect that the trader should collect them from you.*

### **What if the trader won't accept the goods?**

In a case about a seriously faulty second-hand car, a consumer had told a car dealer that they wanted to reject the car and get their money back. The court decided that it would be reasonable for the consumer to hold on to the car (but not use it) until the dealer had made a refund.

**We recommend** you stop using the goods and keep them in a safe place. You could then consider if you want to take the matter further by taking action in the Disputes Tribunal. See our factsheet *The Disputes Tribunal* for more information.

## Can I reject goods if they have already been repaired?

Your right to reject goods after a repair by the trader has failed will depend on whether the fault is serious. The court has decided that if a consumer was not given enough information about the fault by the trader at the time to realise the fault was serious, they may still have the right to reject the goods.

## BE AWARE

You cannot reject goods when:

- they have been disposed of, destroyed, lost, or damaged after delivery
- they have been attached to other property and cannot be removed without damaging them – e.g. defective wallpaper – taking it down off the walls will damage it. If it is possible to remove the installed goods, you don't have to attempt this, you can ask the trader to remove them
- you have run out of time to reject.

**Can the trader take into account the use I've had from the goods and reduce my refund?**

No. The Act says any refund must be of the amount paid.

**Can the trader make me accept a credit note or buy other goods from them instead of giving me a refund?**

No. The act does not allow a trader to do this. The exact words in the act are:

*Section 23 (3) The obligation to refund cannot be satisfied by permitting the consumer to acquire goods from the supplier.*

If you are having trouble with a trader trying to tell you that you have to take a 'credit' instead of a refund, take this pamphlet along and refer the trader to the above wording from the act.

**Can the trader reduce my refund because I cannot return the goods in their original packaging?**

No. The Act entitles you to a refund of the amount you paid. In our view it is reasonable that packaging might be broken or thrown away before a fault is discovered.

**I paid for the goods with cash and a trade-in. Can I get my trade-in back?**

The Act says that your refund should be of the price paid, including a value for any trade-in. We suggest that you ask the trader to return your trade-in if it is available. Be aware that the trader cannot insist you take back the trade-in goods; you can ask for the value of the trade-in instead.

**The goods were supplied as part of a service. Can I get a remedy for the faulty service as well as the faulty goods?**

*For example...*

*Barbara hires a dressmaker to make a wedding dress. The dress is not well made. The dress doesn't fit her well and the stitching is very uneven.*

If your contract is one for both **services** (making the dress) and **goods** (the dress itself), you may have a right to remedies from the dressmaker for both the poor service and the faulty dress.

See our booklet *Your Consumer Rights: A guide to the Consumer Guarantees Act (Services)* for more information about the guarantees covering services.



## Remedies from manufacturers

You can sometimes choose a remedy from **either** the manufacturer of the goods **or** the trader you bought the goods from. Going to the manufacturer is useful when the trader has gone out of business or is unreasonable to deal with.

### Guarantees checklist

You can go to the manufacturer/importer if:

- the goods you bought are not of acceptable quality
- the goods are different from a description given by the manufacturer
- there are no spare parts or repairs available (and you were not told this when you bought the goods)
- the manufacturer does not provide what is promised in their written warranty.

You can go to the trader if:

- the goods you bought are not of acceptable quality
- the goods are different from a description given by the trader
- the goods don't match the sample or model you were shown
- the goods aren't fit for their particular purpose
- the goods are sold at an unreasonable price (when no price is given or agreed)
- the trader did not have the right to sell the goods.

## Remedies checklist

### Trader

#### Minor/repairable fault trader can choose:

- repair
- replacement with identical goods
- refund.

You can claim for consequential loss (see page 34).

#### Major/serious fault consumer can choose:

- to reject goods and get a:
  - refund
  - replacement with goods of similar value and type; or
- to keep goods and ask for compensation.

You can claim for consequential loss.

### Manufacturer/Importer

#### Written warranty

- your rights will be set out in the warranty (usually repair or replacement with identical goods); and
- you can claim for consequential loss.

#### No warranty

- you can claim compensation; and
- you can claim for consequential loss.

### What amount of compensation can I ask for?

Where the manufacturer does not provide a written warranty the Act provides a remedy of compensation when there is a fault with the goods.

The amount of compensation is based on the drop in value the fault has caused to the goods. In some cases a serious fault may mean the goods have no value as a result.

In this case your compensation would equal the purchase price. If the fault is only minor, compensation may be worked out by the cost of the replacement spare parts and repair. You do not have to accept an offer to replace or repair unless this suits you.

### **What are my remedies if I bought the goods directly from the manufacturer?**

Manufacturers and importers act as traders when they sell goods directly to consumers, for example in a “seconds” shop at their factory. The remedies available from a trader can apply to a purchase made directly from a manufacturer or importer.

### **The 12 month written warranty with the goods just expired. Can I still get a remedy if they become faulty tomorrow?**

The Act may still give you a right to a remedy against the manufacturer if the goods do not meet acceptable quality.

### **The replacement for the faulty goods has a new written warranty for only eight months**

The manufacturer can choose the expiry date for a written warranty. But if the manufacturer led you to believe the replacement would come with a full warranty, you may assume the new warranty will be for the same term as the first one.

## **Be aware**

Remember the Act may provide a remedy for a faulty replacement if the manufacturer has not given you a written warranty.



**Does a trader have to provide remedies set out in a written warranty if the manufacturer's business closes?**

No. The trader does not have to meet any responsibilities set out in a manufacturer's written warranty unless the trader has told you that they had taken over the warranty. Remember, you may be entitled to remedies under the Act from the trader when a guarantee under the Act is broken.

For more information about businesses in liquidation or receivership see our factsheet *When a Business Closes Down*.



## Extra loss or damage

### (consequential loss)

Consequential loss is a loss (normally one that costs you money) that you suffer as a result (consequence) of something going wrong with the goods you bought or a service received.

The Consumer Guarantees Act allows you to claim compensation for consequential loss from a trader.

*For example...*

*Debbie's freezer breaks down due to a fault while she is away mountain biking for the weekend. As a result of the breakdown all the food in the freezer goes off. The trader will be responsible for the cost of replacing the food lost as a result of the fault.*

## Be aware

You do have a duty to take reasonable steps to prevent further loss. So, if food could have been saved in time by moving it to another freezer, you would not be able to claim for loss of the food.

## Trader's liability for consequential loss

A trader might minimise their liability for consequential loss by offering a replacement if your goods are being repaired and this repair will take some time.

*For example...*

*Teresa's family washing has to be done at a laundrette some distance away while the repairer fixes a fault with her washing machine. It may be easier for the trader to supply a replacement washing machine while hers is being repaired, rather than pursuing the trader for reimbursements of the laundrette costs.*

The trader's responsibility is not endless. It is limited to loss or damage that could have been expected to result from the product's failure. A trader is not liable for losses that are not foreseeable.

*For example...*

*Irihapeti bought a sewing machine from a trader, intending to use it to run up outfits for friends who were going to pay her for her skills (the trader didn't know this). If the sewing machine develops a serious fault and Irihapeti wants to reject it, she may be entitled to a refund but not compensation for the loss of earnings. This wouldn't have been foreseeable.*

## Putting a value on consequential loss

Sometimes it is hard to put a "dollar figure" on the loss you have suffered because the damage has affected more than the goods themselves.

*For example...*

*Trich has used a liquid cleaner in accordance with the instructions to remove a spaghetti bolognese stain on her new curtains. The cleaner has badly damaged one of the four curtains in her living room.*

### **What is the trader liable for? A “patch-up” job or the cost of replacing all the living room curtains?**

This will depend on whether a “patched” curtain will compensate you properly. Will a new curtain match the others? Compensation should put you into the position you would have been in if the cleaner had worked - four clean matching curtains.

If the curtains were new the trader may have to meet the cost of replacing all the curtains. If the curtains were well worn, the compensation would be less to reflect their wear and tear.

### **Can a trader contract out of the responsibility for consequential loss?**

A trader can’t contract out of the Consumer Guarantees Act, except where they are selling goods or services to someone for use in their business.

A retailer can’t write a term into a sales contract that says that they will not be responsible for extra loss suffered.

If traders attempt to contract out of the Act when selling consumer goods or services, they may be breaching the Fair Trading Act by misleading you about your legal rights.

## Taking the matter further

### What if the trader won't give me what I want?

The law gives you the general principles but in the real world things are often not as clear cut. There are lots of reasons why a trader may not give you what you are asking for.

Perhaps the seller doesn't accept that there is a fault, or thinks that you caused the fault by mistreating the goods. Perhaps the seller does not agree that the fault is serious and will only repair the goods and not give a refund. Or perhaps the trader does not understand their obligations under the law.

Some suggestions to help resolve a dispute with a trader are:

- give this booklet to the trader to read
- talk to the manager, not just the staff at the counter
- if the business has a head office, contact them
- keep notes of any discussions you have with the trader
- get a second opinion on the fault from another trader
- write a letter describing the problem and the remedy you are asking for, and why you believe you are entitled to this remedy.

A letter could include something along these lines:

*I bought a spatula from your shop on 1 April. After using it three or four times the handle came off and some very nasty glue fragments fell into my béchamel sauce. On 14 April I returned to your shop and requested a refund of the purchase price. You offered to repair the spatula by gluing it back together.*

*Under the Consumer Guarantees Act a consumer is entitled to reject goods and claim a refund when goods are not of acceptable quality due to a serious fault. I believe this fault is serious and I do not accept that the fault would be remedied by re-gluing. Please contact me to arrange a refund.*

Sometimes, the key to resolving disputes can be by negotiation. Think about what the seller is offering you and ask yourself if this is a reasonable compromise.



## **I've tried everything but we just can't agree – what do I do now?**

Where you are unable to resolve the problem with a trader or manufacturer, you could take a claim to the Disputes Tribunal. The Tribunal is an informal and relatively inexpensive way to resolve a complaint under the Act. You don't need a lawyer to take your claim to the Tribunal.

For more information about making a claim in the Disputes Tribunal see our factsheet *The Disputes Tribunal* or ask at your nearest District Court.

## **Is there a time limit for taking action?**

You have six years from the time the problem appears to take legal action.

A long delay in complaining may affect your remedies or make it difficult to prove the problem with the goods. We recommend that you advise the trader of the problem as soon as possible so that the trader can record the complaint.

For more information about making a complaint see our factsheet *Making a Customer Complaint*.

## **Related Ministry resources**

- Your Consumer Rights: A guide to the Consumer Guarantees Act (Services)
- Back on the Right Road
- The Disputes Tribunal
- Fair Trading Act
- Goods for Commercial Use
- Making a Customer Complaint
- Refunds – Changing Your Mind
- When a Business Closes Down
- When can I Cancel a Contract?
- Personal Property Securities Register Information for Consumers (Ministry of Economic Development)

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The Ministry of Consumer Affairs has produced this booklet as a general guide for consumers about the Consumer Guarantees Act.

The booklet sets out the Ministry's interpretation of the Act. The booklet should not be used as a substitute for specialist legal advice.

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